for diversity in programming,[172] a position for which there is no empirical support and as to which Media General does not agree, the record in the *2001 Proceeding* and indeed the FCC's experience in the last quarter century of implementing the newspaper/broadcast cross-ownership rule, have failed to show any link at all between the two. Without such a link, diversity of ownership is a wholly irrational proxy for diversity of viewpoint and, particularly under the new presumption articulated in *Fox* and seconded in *Sinclair*, is unsustainable as a justification for the newspaper/broadcast cross-ownership rule. In the *Fox* panel's words, it was at best an "aspirational" proxy that has since been disproven in practice and no longer has any validity.[173]

The records both at the time the newspaper/broadcast cross-ownership rule was adopted and in the *2001 Proceeding* conclusively support this view. In adopting the rule in 1975, the FCC acknowledged that it was regulating based on speculation and conjecture. The agency codified the rule, not because it cited any "basis in fact or law for finding newspaper owners unqualified as a group for future broadcast ownership,"[174] but solely because "[w]e think that any new licensing should be *expected to* add to local diversity."[175] Notably, however, the empirical material in the record at the time undercut any need for this "hoped-for" gain in diversity.[176]

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[172] *Id.* at 1047.

[173] *Id.*

[174] *Second Report and Order* at 1075.

[175] *Id.* (emphasis supplied).

[176] For instance, in the course of adopting the rule, the FCC found significant diversity created by the separate operation between commonly-owned broadcast stations and newspapers. *Id.* at 1089. In addition, a study of broadcast licensee programming that the FCC's own staff conducted in 1973 as part of the original rulemaking proceeding found that newspaper-owned broadcast stations actually rendered more locally-oriented service. FCC Staff 1973 Programming Study, 50 FCC 2d at 1078 n.26.

The record in the *2001 Proceeding* and the material attached as Appendices 9 to 14 similarly demonstrate that diversity of ownership and viewpoint already exist and that one bears no link to the other. The extensive market-by-market reviews compiled by Media General and other commenting parties in the *2001 Proceeding* as well as the updates of the 2001 material attached to this pleading show that residents of all markets across the United States, no matter what the size, have a multiplicity of informational and entertainment outlets at their disposal.[177] In addition, the record in the *2001 Proceeding* contained numerous quantitative studies showing that cross-ownership enhances the delivery of news and information and leads to higher levels of non-entertainment programming.[178] Equally significant, the record in the *2001 Proceeding* established that common ownership does not have an effect on the news coverage and opinions delivered by commonly-owned properties.[179]

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[177] Media General Comments at Appendices 9-14 and Appendices 9-14 hereto; Media General Reply Comments at 6-8, and extensive comments of Hearst-Argyle Television, Inc., The New York Times Company, the Hearst Corporation, Tribune Company, and West Virginia Media Holdings, LLC in *2001 Proceeding* discussed therein.

[178] Media General Comments at 11-13 and Appendix 5 thereto. As discussed therein, these studies include the FCC Staff 1973 Programming Study, a survey of programming prepared by A.H. Belo in 1998, and a programming study by Dr. Robert S. Lichter, which Media General commissioned in late 2001, to study levels of non-entertainment programming in all of the markets where Media General owns television stations and newspapers. The record in the *2001 Proceeding* was also replete with studies showing media outlets under common ownership have a strong commercial incentive to diversify their media and content offerings to reach the largest possible aggregate audience. NAA Initial Comments in *2001 Proceeding* at 44 and studies cited therein. These models have also been borne out in the radio industry. Media General Reply Comments at 14-15, *citing* Steven T. Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence for Radio Broadcasting*, 66 THE QUARTERLY J. OF ECONOMICS 1009 (Aug. 2001).

[179] Media General Reply Comments at 11-14, *citing*, David Pritchard, *A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 FED. COMM. L. J. 31 (Dec. 2001). *See also* NAA Initial Comments in *2001 Proceeding* at 44 n.121 *citing* three studies by academics and economists critiquing the belief that diversity of ownership leads to diversity of viewpoint.

In contrast to the analyses in the *2001 Proceeding* supporting repeal as well as the three Pritchard studies discussed above, not a single report was placed in the *2001 Proceeding*'s record that establishes a link between diversity of ownership and diversity of viewpoint. Nor did any such report offer proof that the rule is needed to advance diversity, as required by the presumption set forth in Section 202(h) and interpreted in *Fox* and *Sinclair*.[180] Rather, the "studies" submitted in the *2001 Proceeding* by the opponents of repeal tended to focus on generalized notions of competition and concentration, instead of providing any empirical evidence related to content or diversity.[181] The only recent "empirical" study submitted or cited by the opponents of repeal that purportedly deals with programming-related issues presented a number of self-evident propositions based on television viewing data -- for instance, different racial groups prefer different programming and black audiences tend to view more television in

[180] The FCC should be wary to avoid the mistaken reasoning it applied in the decision under review in *Sinclair*. As Judge Sentelle described in his partial dissent from the remedy in that case,

> "Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules." *Fox*, 280 F.3d at 1048. The FCC, however, seems to have assumed the need for the rule, and then attempted to justify it. But "[h]aving framed the present rulemaking proceeding in terms of providing a persuasive rationale for a rule that seemed unnecessary, and having retained that framework, the FCC could not simply assume . . . a need for the rule and focus on rebutting specific attacks levied against it. Such review is hardly 'especially searching.'" *Radio-Television News Dirs. Ass'n v. FCC*, 184 F.3d 872, 886 (D.C.Cir. 1999) (internal footnote and citation omitted).

Sinclair, 284 F.3d at 171 (Sentelle, J., partially dissenting).

[181] C. Edwin Baker, "Giving Up on Democracy: The Legal Regulation of Media Ownership," Appendix C to Consumers Union Comments; "Expanded Local Radio Ownership and Market Concentration Study," Attachment 4, and "Expanded Local Television Ownership and Market Concentration Study," Attachment 5 to Reply Comments of Office of Communications, Inc. *et al.* in *2001 Proceeding*, filed Feb. 15, 2002; "HHI Index," Attachment 5 to UCC Comments; Douglas Gomery, "The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis," Attachment A to Reply Comments of the American Federation of Labor and Congress of Industrial Organizations in *2001 Proceeding*, filed Feb. 15, 2002 ("Gomery Report").

markets with television stations offering more black-targeted programming;[182] however, the study fell far short of establishing any link between diversity of ownership and diversity of viewpoint. Similarly, statements in the opponents' "studies" to the effect that programming offered by NBC, CBS, ABC, and Fox affiliates "still accounts for about half of all television viewing,"[183] merely demonstrate the popularity of the broadcast material offered by large group owners. They in no way establish any adverse effect on diversity of viewpoint, a level of proof required under Section 202(h), *Fox*, and *Sinclair* to counter the overwhelming volume of contrary and very probative material showing cross-ownership does not harm diversity.

Indeed, were an appellate court to apply the principles of Section 202(h) and the reasoning in *Fox* and *Sinclair* to retention of the newspaper/broadcast cross-ownership rule, its calculus could not ignore that the FCC's emphasis on diversity and retention of the rule is actually hurting the delivery of local news. As noted earlier, Media General and other medium and small group owners providing local content in their markets face increasing competition from larger national and international players that typically present the same undifferentiated non-local news and information product across all markets. This competition combined with worsening financial conditions has caused television stations in both large and small markets to terminate almost 40 local newscasts.[184] Repeal of the rule is needed to stem and help reverse this decline.

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[182] Joel Waldfogel, "Who Benefits Whom in Local Television Markets?" Appendix B to Consumers Union Comments.

[183] Gomery Report at 4.

[184] Attachment B to 2002 Gentry Statement, Appendix 3 hereto.

B. Repealing the Archaic Newspaper/Broadcast Cross-Ownership Ban Would Not Harm Competition in Local Markets, and *Fox* Makes Clear That the FCC Must Consider Competition from New Media Services in Evaluating Whether the Newspaper/Broadcast Cross-Ownership Rule Is Necessary in the Public Interest.

When the FCC adopted the newspaper/broadcast cross-ownership rule in 1975, it had no evidence of any competitive harm from common ownership that needed to be addressed. At the time, the FCC acknowledged that no claim had been made that "newspaper-television station owners [had] committed any specific non-competitive acts."[185] In addition, the Commission noted that its own review of the effect of newspaper ownership on television advertising rates "fail[ed] to show an effect on rates attributable to newspaper ownership."[186] In affirming adoption of the rule, the Supreme Court also recognized this lack of any tangible proof of a competitive harm: "In the Commission's view, the conflicting studies by the parties concerning the effects of newspaper ownership on competition and station performance were inconclusive, and no pattern of specific abuses by existing cross-owners was demonstrated."[187]

Since 1975, the FCC has had numerous occasions to consider competition in various markets for media advertising and has not uncovered any tangible harm from newspaper/broadcast cross-ownership. The most direct inquiries into the effect of the rule on competition were made in the 1998 Biennial Regulatory Review and last year in the *2001 Proceeding*. The FCC's failure to repeal the rule in either proceeding was particularly surprising given several concrete economic studies submitted in those records that demonstrated a complete lack of any competitive harm from newspaper-broadcast combinations in markets of all sizes.

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185 *Second Report and Order*, 50 FCC Rcd at 1072.

186 *Id.* at 1073.

187 *FCC v. National Citizens Comm. for Broad.*, 436 U.S. at 786 (citations omitted).

One very broad study analyzed structural indications of competition across a sample of 21 DMAs of all market sizes between 1975 and 1997.[188] In examining competition among newspapers, television, and radio in the sale of advertising, a market that the study argued was overly narrow given the artificial exclusion of all other relevant competing media, it found that ownership concentration in 20 of the 21 DMAs in the study decreased or remained unchanged since 1975 despite the adoption of the 1996 Telecommunications Act. When the study was updated in December 2001 for submission in the *2001 Proceeding*, it found even more striking results. Utilizing a model that assumed that each radio and television station in each DMA had the same share of revenue, the study concluded that concentration had decreased "about 40 percent" since 1975.[189] As noted in this updated study, any advertising product market broad enough to include newspapers and broadcast stations would reasonably have to encompass other advertising outlets, which were not measured in the study. Thus, the results of the study significantly overstated the actual levels of concentration, which would be greatly reduced were other competing media included.[190]

To disprove the theoretical possibility that cross-ownership itself could impart unilateral market power in the advertising market, another related part of the same 1998 study examined the advertising prices of over 1,400 daily newspapers. The study found no basis to conclude that cross-ownership is likely to lead to higher prices. After controlling for other factors, the study

[188] EI Analysis I, attached as Appendix B to NAA 1998 Comments. The EI Analysis I ensured that all markets were represented by using data from 21 DMAs that ranked in size from DMA #3 to DMA #206. Starting with the first 10 DMAs and proceeding through DMA #211, the study broke the DMAs into groups of 10 and then selected one market from each group of 10.

[189] EI Analysis II, attached as Appendix IV to NAA 2001 Comments, at 8, Table 4.

[190] EI Analysis II at 3, 9-10.

found that there was no statistically significant difference between advertising prices of cross-owned newspapers and those of other papers.[191]

To address any concern about the effect of repeal of the newspaper/broadcast cross-ownership rule on newspaper advertising prices in medium and smaller markets of the type that opponents of repeal had raised in some of their isolated anecdotal discussions of conjectural harms, Media General conducted a further study refining this 1998 analysis of advertising prices at the 1,400-plus daily newspapers. The new study focused on smaller markets using two separate analyses. The first performed standard regression analyses on subsets of data including only smaller markets, specifically three different groupings of DMAs representing DMAs 159-211 (lowest DMA quartile), DMAs 106-158 (lowest third DMA quartile), and DMAs 106-211 (bottom half of DMAs). The second analysis tested for any potential impact on cross-ownership on advertising prices in each of the nine markets in DMAs 106-211 that included a newspaper-broadcast combination. The results from each study were very similar. After controlling for other factors, there was no statistically significant difference in either analysis between advertising prices of cross-owned newspapers and those of other papers.[192]

In the past, the FCC has been notably reticent in embracing new technologies and taking them into consideration in competitive evaluations of its broadcast ownership rules.[193] The *Fox* decision makes clear that this reluctance is inappropriate. In objecting to the FCC's retention of the cable/television cross-ownership rule, Time Warner had argued that the agency's concerns

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[191] EI Analysis I at 1-2, 16.

[192] EI Analysis III, attached as Appendix A to Media General's Reply Comments.

[193] *See, e.g., Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12953 (1999). ("[A]t this time we believe it is premature to consider the Internet a 'voice' for purposes of our new rule. Although the Internet is growing in popularity, many still do not have access to this new media . . . . ")

that cable operators might discriminate against broadcasters if the rule was repealed were meritless because competition from direct broadcast satellite ("DBS") providers would make such discrimination unprofitable.[194] The Commission did not address this argument in deciding to retain the cable/television cross-ownership rule, a "failing" that required the FCC's decision to retain the rule to be reversed as arbitrary and capricious.[195]

These comments and the record in the *2001 Proceeding* include extensive evidence of the growth of new media services, particularly the Internet, and *Fox* requires the FCC to consider such material in evaluating not only diversity but also competition.[196] Evidence shows that the Internet is becoming a fixture in the average American's home and lifestyle. In the *2001 Proceeding*, Media General showed that a large percentage of households in the states in which its convergence markets are located have computers and access to the Internet. According to a National Telecommunications and Information Administration ("NTIA") report, the percentage of households with computers ranged from 43.3 percent in South Carolina to 53.9 percent in Virginia; the percentage of households with Internet access ranged from 32.0 percent in South Carolina to 44.3 percent in Virginia.[197] Although in updating these numbers NTIA reports the statistics in somewhat different form, the new tallies show an increase in Internet access that is sufficiently great to make irrelevant any difference in definitions. This latest report shows that the percentage of the population in each of the same states with access to the Internet has increased by a minimum of 7.3 percent in the case of Florida and a whopping 19.7 percent in

[194] *Fox*, 280 F.3d at 1050.
[195] *Id.* at 1051.
[196] *See, e.g., supra* pages 21-25; Appendices 9-14 hereto; Media General Comments at 19-29; Appendices 9-14 thereto.
[197] Media General Comments at Appendix 8.

North Carolina.[198] Residents of Alabama now have the lowest Internet access percentage, still a respectable 43.3 - 49.0 percent, and residents of Virginia lead the group with 55.7 - 61.2 percent having Internet access.[199]

The Internet and other new media are clearly making significant inroads on the American public's use of more traditional sources of news and information. Locally established Internet sites, in particular, create a substitute for local newspapers and offer a very inexpensive and quick method for reaching consumers in every market not just with news but with advertising.[200] These growing services and the competition they create for traditional media outlets must be taken into account by the Commission in reviewing the newspaper/broadcast cross-ownership rule. When the Commission does so, it will find the profusion of new outlets dispels any concern it may have over the effect of repeal of the newspaper/broadcast cross-ownership rule, not only on diversity, but also on competition.

C. Repeal of the Newspaper/Broadcast Cross-Ownership Rule Would Advance the Communications Act's Requirement That FCC Actions Promote Localism.

As the *2002 NPRM* acknowledges, the FCC has a long history of pursuing policies aimed at encouraging localism.[201] These policies for many decades found their statutory basis in Section 307(b) of the Communications Act.[202] In 1992, in adding numerous cable-related provisions to the Act, Congress reemphasized the importance of localism. The findings in the

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[198] Appendix 8 hereto.

[199] *Id.*

[200] Media General Comments at 26-30; Media General Reply Comments at 8-11; lists of Internet sites in Appendices 9-14 attached hereto and to Media General Comments.

[201] *2002 NPRM* at ¶¶ 69-71.

[202] Section 307(b), 47 U.S.C.A § 307(b) (2001), provides that "the Commission should make such distribution of licenses, frequencies, hours of operation, and of power among the several

Cable Television Consumer Protection and Competition Act of 1992 explicitly stated that "[a] primary objective and benefit of our nation's system of regulation of broadcast television is the local origination of programming."[203] Most recently, the *Fox* court recognized that one of the FCC's reasons for retaining the national television ownership cap was "to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better."[204]

Although the FCC in 1975 did not cite localism as one of the goals or purposes it was trying to advance in adopting the newspaper/broadcast cross-ownership rule, it should clearly be a policy that the FCC considers today in evaluating the rule's continued utility. In the *2002 NPRM*, the FCC expresses concern about the availability of local news and public affairs programming and inquires whether "ownership limits tend to ensure an adequate supply of local information intended to meet local needs and interests?"[205] Media General submits that the newspaper/broadcast cross-ownership rule tends to have the opposite effect: it hinders the production and delivery of local information intended to meet local needs and interests.

Both in its initial and reply comments in the *2001 Proceeding* and in the appendices attached to these comments, Media General has compiled an extensive record regarding the availability of local and public affairs information programming, both from its own outlets and other sources in each of Media General's six convergence markets.[206] Through its convergence efforts, Media General has been able to deliver better, faster, and deeper local news reporting.

States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."

[203] Pub. L. 102-385, §§ 2(a)(10), Oct. 5, 1992, 106 Stat. 1460.

[204] *Fox*, 280 F.3d at 1036, 1043.

[205] *2002 NPRM* at ¶ 71.

[206] Appendices 9-14 hereto; Media General Comments at Appendices 9-14.

Its reporters have been able to cover stories from additional and more varied angles. In Tampa, in particular, convergence has allowed the Media General properties to put more reporters and photographers in the community, increase the overall and core circulation of *The Tampa Tribune*, continue to deliver news programming that achieves superlative ratings and numerous awards for quality, and maintain the same number of newscasts while adding a whole hour of locally produced entertainment programming in late morning.[207] In Media General's smaller convergence markets, it has had similar success in increasing coverage of local news stories and events.[208]

Media General's initial and reply comments in the *2001 Proceeding* and the appendices to these filings also document the extensive local information and programming available in the six Media General convergence markets from non-broadcast sources, such as cable and the Internet. Although it is difficult to obtain channel listings for the wide array of cable systems in Media General's markets, the lists that Media General was able to compile from *TV Guide* and direct inquiries to the cable systems confirm that a substantial majority of the systems offer local origination and leased access channels. Of those systems that do, a significant majority offer more than two channels.

As discussed above, in all of its markets, and particularly in its co-owned markets, Media General has seen a recent and rapid rise in the number of locally created Internet sites. To demonstrate this profusion, both last year and this fall, Media General collected and categorized scores of Internet sites available, on a local basis, in each of its converged markets. In the appendices, these sites have been grouped into many of the same categories or section headings as appear in a local newspaper. The sites offer a wealth of information about their local

[207] 2002 Gentry Statement at 4 and Appendix 4.

communities. As many as one-third of the sites offer continuously updated locally-generated content. Some of the information is of general interest, such as news, weather, and traffic information; other sites offer news clearly designed for niche audiences. The news on some sites covers recent events, provides information about upcoming occurrences, or provides specific and very targeted information. The local sites together should be considered the equivalent in each market of several additional local newspapers.

During the 2000 elections, all of the markets had local candidate sites on the Internet as well as local political party sites with election-related information. The Internet has quickly become a new source for civic information and the exchange of ideas or discourse on current political issues.

The Commission has questioned whether the ownership limits ensure the provision of local information.[209] Media General submits that not only are the rules unnecessary to achieve such a result, given the proportion of local news and information already available from traditional and non-traditional sources, but that the existence of the newspaper/broadcast cross-ownership rule actually disserves the Commission's goal of localism. As noted earlier, diminished network compensation and the increasingly high cost of producing quality local news content has resulted in the cancellation of tens of local newscasts around the country in the last three years. Repeal of the rule would allow local newspapers to help reinvigorate these struggling news operations. Simply, fostering localism requires repeal of the newspaper/broadcast cross-ownership rule.

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[208] *See supra* pages 13-21 and 2002 Gentry Statement at 3-6.

[209] *2002 NPRM* at ¶ 71.

D. Innovation, Another Policy Goal in the Communications Act, Requires Repeal of the Newspaper/Broadcast Cross-Ownership Rule.

As the *2002 NPRM*, notes, "change permeates virtually every aspect of the organization of media markets and the operation of media companies."[210] Congress has directed the Commission to take heed of these changes and make the introduction of new technologies and services a priority,[211] and repeal of the newspaper/broadcast cross-ownership rule would clearly advance this goal.

As one member of the Commission has recently recognized, a market-based, deregulatory approach favors innovation:

> My second core principle ["Fully functioning markets invariably make better decisions than do regulators."] derives from my faith in the ability of market forces to maximize consumer welfare. Despite the noblest of intentions, government simply cannot allocate resources, punish sloth, or spur innovation as efficiently as markets.[212]

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[210] *Id.* at ¶ 65.

[211] Section 157 of the Communications Act, 47 U.S.C.A. § 157 (2001) provides "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public." In related fashion, the preamble of the 1996 Telecommunications Act states, "AN ACT to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications customers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996).

The *2002 NPRM* speaks of innovation as a policy subsumed within the Commission's goal of promoting competition. Media General submits that "innovation," possessing as it does its own independent statutory basis, is clearly a separate policy goal that the FCC must advance in addition to competition.

[212] K. Abernathy, "My View from the Doorstep of FCC Change," 54 FED. COMM. L.J. 199, 204 (2002).

Applying this pro-innovation approach and the standards set forth in Section 202(h), the Commissioner concludes that the newspaper/broadcast cross-ownership rule is "due for review."[213]

The Commission adopted the newspaper/broadcast cross-ownership rule based only on a "hoped-for" gain in diversity. As shown at length above and in the reviews of its six convergence markets that Media General has prepared, there is a profusion of outlets and owners, and competition is alive and well and no longer is something the Commission must seek to protect through any form of regulation.

At the same time, innovation is now being stifled by the existence of the newspaper/broadcast cross-ownership rule. Without the rule, Media General could expand the phenomenal successes it has had in the delivery of local news and programming beyond Tampa and the other five markets where it is practicing convergence. Without the rule, other local newspaper companies that, unlike Media General and a handful of companies that have been willing to risk Commission reversals in implementing convergence, could themselves begin to make the advantages of convergence available in their own markets around the country.

In short, only by repeal of the rule will the FCC be able to "encourage the provision of new technologies and services to the public" in markets everywhere.[214] The newspaper/broadcast cross-ownership rule has long outlived any predictive and speculative rationalizations that supported its adoption, and the Commission's interest in fostering innovation requires that it be repealed.

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[213] *Id.* at 212.

[214] 47 U.S.C. § 157.

VI. Repeal of the Newspaper/Broadcast Cross-Ownership Rule Is Required for All Markets, Regardless of Size.

Retention of the newspaper/broadcast cross-ownership rule cannot be sustained under any factual or legal rationale. Similarly, retention of a modified newspaper/broadcast cross-ownership rule that is discriminatorily applicable to medium and small markets would be equally indefensible and would weaken the package of media standards that the FCC ultimately decides to retain. There are at least seven reasons that demonstrate why across-the-board repeal of the rule is the only sustainable approach.

First, vacatur of the cable television/television cross-ownership rule has applied in all markets. When it ordered vacatur of that rule, the court in *Fox* did not suggest any need to retain it in smaller markets. Neither did the Commission ever mention such a concept when it sought rehearing of *Fox*, and the agency has allowed the rule to disappear nationwide. If there is no reason to follow a graduated market approach in repealing cross-ownership of television and cable television, two outlets the FCC does regulate, there is even less reason to do so for combinations of television stations and newspapers, which are otherwise unregulated by the FCC.

Second, in the empirical studies cited in the *2001 Proceeding* that relate to programming and in the Pritchard studies discussed above, market size had no effect on the conclusions. In Dr. Lichter's study measuring non-entertainment programming, which Media General submitted in *2001 Proceeding*, he found that, in comparing stations in markets with co-ownership and those without, stations in the three smallest Media General convergence markets still aired more non-entertainment programming than stations in the immediately higher-ranked DMAs.[215] In his studies, Professor Pritchard also did not reach any different conclusions for stations in small markets. In his study published last fall by the FCC, a newspaper/broadcast cross-ownership combination in Fargo was among those that exhibited no "noticeably different" "slant" in television and newspaper coverage of the 2000 Presidential election.[216] In Professor Pritchard's study submitted in the Commission's local radio ownership proceeding, four out of the five markets in which he summarized the growth in local radio outlets providing local content were medium or small markets. For all of these markets, he found that the number of media outlets focusing on news and information about local events increased steadily over the years with no diminishment in diversity because of the economic consolidation following passage of the Telecommunications Act of 1996.[217] Indeed, the programming study that the FCC staff itself undertook in 1973 in the proceeding that led to the *Second Report and Order* included television stations from variously sized markets. As it noted, stations in the seven largest markets were specifically excluded from the study, which found that, on average, television stations owned by newspapers offered more news, non-entertainment, and overall local programming than other television stations.[218]

Third, small markets have been equally affected by the dramatic growth in the number of media outlets and owners since the newspaper/broadcast cross-ownership rule was adopted. Media General's market-by-market review of outlets and owners in its six convergence markets showed this profusion to be universal.[219] The review of outlets and owners released by the FCC

[215] Lichter Study, Table 1, attached as Appendix 5 to Media General Comments.

[216] *See supra* at page 47.

[217] *See supra* at pages 49-50.

[218] Appendix C, *Second Report and Order*, 50 FCC 2d at 1095 n.4.

[219] Appendices 9-14.

this fall also included many medium and small-sized markets and found high rates of growth that it used words such as "whopping" to describe.[220]

Fourth, the empirical studies in the record that relate specifically to advertising competition show no reason to discriminate against small market stations in repealing the newspaper/broadcast cross-ownership rule. The comprehensive studies of concentration and advertising rates prepared by Economists Incorporated in 1998 and updated in 2001 drew on data from large and small markets across the country; market size made no difference in the findings.[221] Similarly, the study that Media General commissioned to study advertising prices at newspapers in smaller markets found no statistically significant difference between advertising prices of cross-owned newspapers and those of other papers in such small markets.[222]

Fifth, good journalism is expensive to produce no matter what the market size. The list of cutbacks in local television newscasts attached to Professor Gentry's 2002 Statement shows stations in small markets have been hit just as hard by the economic downturn.[223] Indeed, cutbacks in network compensation have been particularly deep and hard for affiliates in smaller markets.[224]

Sixth, as Media General noted in the *2001 Proceeding*, local media -- again, particularly those in small markets -- face increasing competition from national players who, given the

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[220] *See supra* at pages 43-45.

[221] *See supra* at page 62.

[222] *See supra* at pages 62-63.

[223] Attachment B to 2002 Gentry Statement, Appendix 3.

[224] Dan Trigohoff, *The News Not Out of Topeka: KTKA-TV Latest to Drop Local News; Lower Comp from ABC Cited Among the Reasons*, Broadcasting and Cable, April 22, 2002; Dan Trigohoff, *Station Break*, Broadcasting and Cable, Jan. 21, 2002; Steve McClellan, *Small Town, Big Problems: Financial Problems for Small Market Television Stations*, Broadcasting and Cable, Aug. 6, 2001.

development of technologies over the last quarter century, can now easily send or beam their content and advertising into every market in the nation. The national players siphon off advertising dollars that may otherwise have gone to the communities receiving their material, and they generally have no local presence or commitment. These national players frequently prosper by creating large numbers of specialized video channels or websites, each of which serves a small dispersed audience in each locale, but collectively aggregates many viewers and users. At the same time, the local newspaper, and increasingly the local broadcaster, each of which is dedicated to covering the local community, are facing growing casts of local news operations and increasingly distracted audiences. To survive in the new environment that has emerged since the newspaper/broadcast cross-ownership rule was adopted, local content providers must be allowed to move beyond traditional structural ownership regulations and the confines of traditional media boundaries to reach audiences the way they want to be reached -- with multiple streams of information when, where, and how the audiences demand it.

Finally, there is no reason in the record before the Commission nor is there any reason in common sense to deny small market media operators and consumers the same innovation and benefits that flow from convergence and that are available to their counterparts in larger markets. If anything, the costs and difficulties faced by small market operators make such change even more deserved and compelling. Similarly, consumers in these markets are entitled to access to as much local information as operators in their markets can possibly produce, just as is the case in larger markets. Media General's experience in medium and small markets, as described in the *2001 Proceeding* and these Comments, demonstrates the myriad public interest benefits that can redound to consumers in such markets through convergence. From increased coverage of elections and political events to greater and more in-depth focus on community issues to the highlighting of local weather and sports developments to the conduct of news community-centered events, convergence yields tangible improvements in the public interest.

Nothing in the record shows that any action short of repeal of the newspaper/broadcast cross-ownership rule would be judicially sustainable or in the public interest. Complete repeal of the rule is long overdue.

VII. Conclusion.

Media General submits that, as was true in the *2001 Proceeding*, no legal or factual justifications exist for retaining the newspaper/broadcast cross-ownership ban. Indeed, numerous reasons, as set forth in that proceeding and above, compel its immediate repeal in all markets, large and small. Accordingly, the Commission should eliminate Section 73.3555(d) of its rules.

Respectfully submitted,

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